Remark

Applicants respectfully request reconsideration of this application as amended. Claims 1, 2, 5, 7, 17, 27 and 28 have been amended. No Claims have been cancelled. Therefore, claims 1-30 are present for examination.

35 U.S.C. §103 Rejection

Thomas et al. in view of Herz et al.

The Examiner has rejected claims 1-2, 5, 7, 9-10, 12-13, 17-19 and 27-29 under 35 U.S.C. §103 (a) as being anticipated by Thomas et al., U.S. Patent Application No. US 2005/0149964 ("Thomas"), in view of Herz et al., U.S. Patent No. 5,758,257 ("Herz"). According to the Examiner, Thomas teaches presenting a broadcast to a viewer and providing to the viewer ratings of other broadcasts based at least in part on received viewer feedback to the other broadcasts from other viewers. Herz is relied upon for the rest of the claim.

Herz shows a system that collects demographic and profile information from entertainment customers but that seriously discounts any actual survey or poll responses from these customers. "People often do not provide all of the necessary responses or the correct responses to such ballots or questionnaires." (13:60-62) Instead the system tries to obtain information about the characteristics that a particular customer likes in shows and then presents shows having those characteristics. The likes can also be collected by asking the customer to name some favorites. (12:2-6) "[A] customer may constantly underestimate or overestimate his/her preference rating for a characteristic." (15:11-13) As a result, an original customer profile or agreement matrix must be constantly adjusted and refined primarily by monitoring what the customer watches.

As for rating an actual program, this is done in two ways. First, it is done by expert panels or focus groups in order to determine the characteristics of a particular show. The characteristics are then plugged into the agreement matrix of a particular customer to determine if the customer will like it. (13:12-26) Second, a target audience can watch clips and rate the clip for how much of a characteristic it has and how pleasing it was for the characteristic to be at that level. Herz calls this process a "rave review." (14:11-49) It is unclear to Applicants whether the target audience members are acting for their respective demographic group or whether they are fine tuning their own profiles. It is clear however, that they are not watching a program and then filling out a survey or questionnaire. Herz discredits such a practice as unreliable. Instead Herz teaches a complicated sophisticated system based primarily on demographics and on recording what each customer actually watches.

The present invention does not require such complexity. The basic teaching and underlying premise of Herz is that viewer feedback is not trustworthy. The fundamental objective in Herz is to present the viewer with an ever-better list of choices that are calculated to match up with the viewer's tastes without any viewers having any direct interaction with or knowledge of the process by which the list is created. In the present invention, the viewer is very aware of how ratings are generated. Viewers provide feedback and receive ratings based on the same type of feedback from other viewers. The viewer is then allowed to make its own decision as to whether ratings based on feedback from other viewers can be trusted.

The ratings are further refined using viewer characteristic information such as demographics and system hardware capabilities. This allows the viewer to look at ratings from his own or another demographic group in order to make a viewing decision. For

example, a male viewer 29 years old from a rural area may choose to watch or not to watch a show that is highly rated by urban female teens. In Herz, these ratings are unlikely to be made available to the rural male 29-year old.

These distinctions are brought out in the claims. Claim 1, recites, "providing to the viewer ratings of other television program broadcasts based at least in part on received viewer feedback to the other broadcasts from other viewers."

Looking again at Herz. Herz does not teach "ratings of other television program broadcasts based at least in part on received viewer feedback to the other broadcasts from other viewers." Herz uses the expert·panel approach or the "rave review." Viewer feedback is distrusted in Herz. In addition, Herz does not teach "providing to the viewer rating...from other viewers." Herz uses an agreement matrix to generate a list of shows calculated to please a particular viewer. Accordingly, Claim 29 is believed to be allowable over the reference. Independent Claims 17, 21, and 27 contain similar limitations and are believed to be allowable on similar grounds. The remaining claims are dependent on one of the independent claims and are believed to be allowable therefor as well as for the limitations specifically set forth therein.

Certain of the dependent claims merit specific mention. Claim 8 and similar claims recite that "the viewer characteristic information includes hardware capabilities of an entertainment system of the viewer." Herz make no mention of taking this factor into consideration. It may be that some shows are rated more highly by those with e.g. surround sound processors. The present invention allows this information to be noted and reported back to potential subsequent viewers. This is just one example of the unique features in the dependent claims. The remaining dependent claims are believed to be

allowable for their dependence as well as for the limitation specifically set forth in each claim, respectively.

In sum, the present invention is at odds with Herz in that Herz uses complex analytical tools to determine what viewers like without asking the viewers and while specifically distrusting feedback from viewers. The present invention provides ratings based at least in part on received viewer feedback.

35 U.S.C. §103 Rejection

Thomas, Herz and McKenna, Logan, Sahai, Lett, and Barrett

The Examiner has rejected the remaining claims under 35 U.S.C. §103 (a) as being anticipated by Thomas et al., U.S. Patent Application No. US 2005/0149964 ("Thomas"), Herz et al., U.S. Patent No. 5,758,257 ("Herz"), in further view of various combinations with McKenna et al., U.S. Patent No. 4,816,904 ("McKenna"), Logan et al., U.S. Patent No. 5,732,216 ("Logan"), Sahai et al., U.S. Patent No. 6,594,699 ("Sahai"), Lett et al., U.S. Patent No. 5,539,822 ("Lett"), and Barrett et al., U.S. Patent No. 6,005,597 ("Barrett").

The large number of references involved in these rejections is submitted as further evidence of the nonobviousness of the present invention. In addition, these rejections all rely on the Thomas Herz combination and are traversed for the reasons provided above.

Conclusion

Applicants respectfully submit that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicants respectfully request the rejections be withdrawn and the claims as amended be allowed.

Invitation for a Telephone Interview

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.
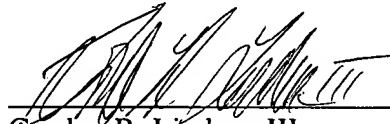
Request for an Extension of Time

Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Charge our Deposit Account.

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: <u>April 12, 2007</u>

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